

REMARKS

Examination of the present application is respectfully requested.

Objection to the drawings

The drawings were objected to under 37 CFR § 1.83(a) for not showing every feature of the invention specified in the claims. Specifically, the Office Action objects to the static members of claim 8 not being shown in the drawings.

Applicant calls to the attention of the Examiner FIGS. 19 and 20, each of which show static member 390.

It is Applicant's belief that the drawings do show the static member of claim 8, and therefore request withdrawal of the objection to the drawings.

Claim objections

The Office Action objects to the claims for not using line indentation.

Applicant has added line indentation for all claims. Since these changes do not affect the substance of the claims, Applicant has not referred to these changes as amendments. Withdrawal of the objection of the claims is respectfully requested.

The claim rejections under 35 U.S.C. § 112

Claims 8-19 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement.

Applicant calls to the attention of the Examiner paragraphs [0082], [0083], and [0084] which discuss certain aspects of particular embodiments of the present invention. Applicant respectfully requests withdrawal of the rejection of claims 8-19.

Claims 10-12 and 23-27 were rejected to under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

The Office Action states that the term "about" in these claims is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant respectfully disagrees with the standards of interpretation being used in the Office Action.

Referring first to the MPEP @ § 2173.05(b), it is stated that "the fact that claim language, including terms of degree, may not be precise, does not automatically render the claim invalid under 35 USC § 112, second paragraph. Neither the MPEP, nor any case law known to the undersigned, requires that the claim itself define a term such as "about."

This same section of the MPEP states that the acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification. Applicant notes for the Examiner that the specification provides several paragraphs that pertain, at least in part, to the adequate support of products such as paper. For example, paragraph [0042] and paragraph [0057] discuss the rigidity of the product being conveyed and the sagging of the product inbetween supported areas.

Further, paragraphs [0082] and [0083] further discuss various aspects of the disclosed apparatus pertaining to stabilizing the motion of the stacked product, and in particular to the range of vertical differences of claims 10-12. In addition, FIGS. 4 and 5 depict a sagging product being conveyed.

With regards to claims 23-25, there are many paragraphs and figures that discuss the angular offset: paragraphs [0043], [0068], [0078], [0079], [0080], and [0081]. Further, angular offset of rollers is shown in FIGS. 2a, 2b, 3, 19, 20, and 21.

The Office Action states that the specification does not provide a “standard” for interpreting this claim term. However, Applicant is unaware of any requirement, in the MPEP or elsewhere, for establishing a “standard.” To the contrary, the CAFC does not state any requirement for such a “standard.” In Central Admixture Pharmacy Services v. Advanced Cardiac Solutions, 82 USPQ 2nd 1293 (CAFC 2007) the Court discusses the claim construction in which a claim uses the word “about”:

The use of the word “about” avoids a strict numerical boundary to the specified parameter. Its range must be interpreted in its technological and stylistic context. We thus consider how the term is used in the patent specification, prosecution history, and other claims. It is appropriate to consider the affects of varying that parameter, for the inventor’s intended meaning is relevant. Extrinsic evidence of meaning and usage in the art maybe helpful in determining the criticality of the parameter. 82 USPQ 2nd @ 1299.

This same approach to interpreting the claims term “about” was also cited by the CAFC in an earlier case this year, Ortho-McNeil Pharmaceutical v. Caraco Pharmaceutical Laboratories, 81 USPQ 2nd 1427 @ 1431 (CAFC 2007). Indeed, in a third case this year, the CAFC was successful in interpreting claims that included the word “about”: Gargill v. Canbra Foods, 81 USPQ 2nd 1705 (CAFC 2007).

In summary, the MPEP does not consider the term “about” to automatically render a claim indefinite. Further, a person of ordinary skill in the art would understand these claim terms especially in light of the numerous paragraphs and figures of the application that discuss certain aspects of the design. Finally, in three separate cases this year, the CAFC has successfully interpreted claims in which the claim includes the word “about,” and has not found any of these claims to be indefinite.

Applicant respectfully requests withdrawal of the rejection of these claims for indefiniteness.

The claim rejections under 35 U.S.C. § 102

Claims 8-17, 20-21, and 23-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,330,045 to Hodlewsky.

It is well accepted that a reference does not anticipate a claim unless the reference includes each and every element of the claim. Applicant respectfully disagrees with the rejections of claims 8-17, 20-21 and 23-27.

Claim 8 includes a plurality of rollers each having an outer surface and a plurality of lobes placed circumferentially round the outer surface. Claim 20 includes a plurality of rollers each having an outer surface and a plurality of lobes placed circumferentially around the outer surface. Claim 23 includes a plurality of rollers each having an outer surface and a plurality of lobes places circumferentially around the outer surface. Hodlewsky does not include the rollers as claimed in claims 8, 20, and 23. Instead, Hodlewsky discloses only cylindrical rollers, referring to the “outer diameter of the roller” (Hodlewsky, col. 4, lines 26,

35, and 41). Further, none of the figures of Hodlewsky show anything except rollers 48 having a cylindrical outer surface.

The Office Action refers to the figures of Hodlewsky for disclosing rounded projections. However, the Office Action does not refer specifically to any figure or text to support this contention. With regards to FIG. 2, Hodlewsky refers to this figure as being a schematic of parallel chains of the links. There is no reference anywhere in Hodlewsky, nor any implication or inference, to support that FIG. 2 discloses a lobed roller.

Lacking all the elements of claims 8, 20, and 23, Hodlewsky cannot be said to anticipate these claims. Applicant respectfully requests withdrawal of the rejection of these claims and of all claims dependent on these claims.

The Office Action refers to Hodlewsky having a static member with a top surface adapted and configured to support a portion of the product. Applicant respectfully disagrees with this statement. The Office Action does not refer to specific elements or figures in making this statement. Therefore it is difficult to analyze this statement. However, Applicant calls to the attention of the Examiner the paragraph beginning at line 67, col. 4, and extending to col. 5, line 8. This paragraph refers to an intermediate support 42 that is designed "so that articles being carried by link 12 will not be caught on the intermediate support 42" (emphasis added). Therefore, it appears that Hodlewsky distinctly teaches away from a static member as claimed.

The Office Action refers Hodlewsky disclosing a difference in heights of more than a half of a millimeter and less than about 2 millimeters. Applicant respectfully requests citation of a specific reference within Hodlewsky to support this statement. The Office Action refers to FIG. 3 in support. Applicant calls the attention of the Examiner that FIG. 3 is not referred

to as a scaled drawing, and for that reason it is not possible to ascertain specific dimensions from this drawing.

The Office Action refers to FIG. 3 for support of the statement that Hodlewsky discloses means for interlocking adjacent driven rollers. Applicant respectfully requests citation of a specific feature shown in any of the drawings or discussed anywhere in the text that refers to such a feature. Further, the Office Action states that Hodlewsky discloses in FIGS. 1 and 3 a means for coupling together rollers such that the rollers rotate in unison. Applicant respectfully requests citation of a specific reference within Hodlewsky to support this statement. In contrast, Hodlewsky appears to state that “rollers 48 do not fit tightly against each other,” and also states that it is “especially important” to have low friction between adjacent rollers (Hodlewsky, col. 4, lines 44-66). In contrast to the statement of the Office Action, Hodlewsky appears to specifically teach away from the coupling from adjacent rollers.

The Office Action states that Hodlewsky discloses adjacent rollers being in a fixed relationship to one another with a predetermined angular offset from the lobe of one roller to the lobe of a adjacent roller, and further that the offsets are within certain specified angular ranges. The Office Action cites FIG. 3 for these statements. As stated earlier, Applicant believes that Hodlewsky does not show lobes of any type, does not disclose a predetermined angular relationship between lobes, and further does not include scale drawings that would permit the measurement of any angular relationship.

The claim rejections under 35 U.S.C. § 103

Claims 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hodlewsky in view of U.S. Patent No. 6,148,991 to Meishner.

It is well accepted in order for one or more references to establish a case of obviousness, that those references include all elements of the cited claims. Applicant respectfully disagrees that the combination of Meishner and Hodlewsky constitute a *prima facie* case of obviousness. As previously discussed, Hodlewsky does not include all elements of claim 8, the elements of which are included in claims 18 and 19. Therefore, the combination of Meishner and Hodlewsky cannot be said to constitute a *prima facie* case of obviousness of claims 18 and 19. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 18 and 19.

Claim 22 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hodlewsky in view of U.S. Patent No. 6,062,378 to Clopton.

It is well accepted in order for one or more references to establish a case of obviousness, that those references include all elements of the cited claims. Applicant respectfully disagrees that the combination of Clopton and Hodlewsky constitute a *prima facie* case of obviousness. As previously discussed, Hodlewsky does not include all elements of claim 20, the elements of which are included in claim 22. Therefore, the combination of Clopton and Hodlewsky cannot be said to constitute a *prima facie* case of obviousness of claim 22. Therefore, Applicant respectfully requests withdrawal of the rejection of claim 22.

CLOSING

No claims have been amended in this Response. Applicant respectfully requests examination of pending claims 8-27.

The undersigned welcomes a telephonic interview with the Examiner, if the Examiner believes that such an interview would facilitate examination of this application.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede any basis for rejections or objections in the Office Action. For those rejections based upon a combination of references, there is no admission that the cited combinations are legally permitted, properly motivated, or operable. Further, with regards to the various statements made in the Office Action concerning any prior art, the teachings of any prior art are to be interpreted under the law. Applicants make no admissions as to any prior art. The remarks herein are provided simply to overcome the rejections and objections made in the Office Action in an expedient fashion.

Respectfully submitted,

By _____
John V. Daniluck
Reg. No. 40,581
Bingham McHale, LLP
10 West Market Street
Indianapolis, Indiana 46204
(317) 968-5531 telephone
(317) 236-9907 facsimile